

Making the contract within the counselling professions

Good Practice in Action 039
Commonly Asked Questions

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Context

This resource is one of a suite prepared by BACP to enable members to engage with BACP's *Ethical Framework for the Counselling Professions* www.bacp.co.uk/events-and-resources/ethics-and-standards/ethical-framework-for-the-counselling-professions/ in respect of making the contract in the context of the counselling professions.

Using Commonly Asked Questions resources

BACP members have a contractual commitment to work in accordance with the current *Ethical Framework for the Counselling Professions*. The Commonly Asked Questions resources are not contractually binding on members but are intended to support practitioners by providing general information on principles and policy applicable at the time of publication, in the context of the core ethical principles, values and personal moral qualities of BACP.

Specific issues in practice will vary depending on clients, particular models of working, the context of the work and the kind of therapeutic intervention provided. As specific issues arising from work with clients are often complex, BACP always recommends discussion of practice dilemmas with a supervisor and/or consulting a suitably qualified and experienced legal or other relevant practitioner.

In these resources, the word 'therapist' is used to mean specifically counsellors and psychotherapists and 'therapy' to mean specifically counselling and psychotherapy. The terms 'practitioner' and 'counselling related services' are used generically in a wider sense, to include the practice of counselling, psychotherapy, coaching and pastoral care.

Introduction

Making a contract can be a thorny issue for many practitioners. Whilst not wanting to lay down too many rules, it is nevertheless the client's right to know what the terms and conditions of counselling are. The *Ethical Framework for the Counselling Professions* commits members to showing respect by: 'agreeing with clients on how we will work together' (Commitment 3c) and also by working with 'clients on the basis of their informed consent and agreement' (Good Practice, point 26). Poor information often may lead to misunderstandings later on and, sometimes, to complaints being made against the counsellor. Clear contract-making may help alleviate some potential sources of grievances.

“the client has a right to know what the conditions of counselling are”

In this good practice resource, you will find some commonly asked questions about making contracts, and some possible answers. It is written as an imaginary conversation. Neither the list of questions nor the answers are intended to be exhaustive: inevitably there will be unanswered questions. Indeed, part of the purpose of the resource is to encourage you to think of other questions, and so to be more prepared when your clients ask them. Therefore, it is laid out in the form of a case study.

Case study

A newly accredited counsellor (Andy) wants to move away from the agency where he has been working and set up in private practice, working with adults online as well as face to face. In order to implement good practice Andy discusses the issues with supervisor Morgan. This case study takes the form of dialogue between Andy and Morgan as they work through the issues involved in setting up in private practice...

Andy: I know I have to use a contract, but nobody has really told me what a contract is. Can you help?

Morgan: That's an excellent question. Most practitioners know that they have to use a contract, but not exactly what that is, or what it means.

In fact, a contract is a legally binding document that sets out an offer (of therapy), which is accepted (by the client) for what is known as 'mutual consideration'. This means that there is an advantage for both parties, which might be making life changes for the client and some kind of consideration for the practitioner. For example, this may be a financial payment, or accumulating hours for coursework, or towards accreditation, or the fact that being involved in a working environment and helping people, offers something that the practitioner considers valuable. This does not need to be explicitly stated in the contract but both parties need to be satisfied with the arrangement. If you would like to know more about the details of contract law in relation to counselling and psychotherapy, read Mitchels and Bond (2010) chapter 4.

Andy: Thank you. That's really helpful. But could you explain why the contract is so important in counselling?

Morgan: Contracting is important because the client has a right to know what they can expect from therapy.

Learning about their expectations and spelling out what is expected from them, and what they can expect from you, helps to minimise any false notions or misunderstandings on either side. It also gives the client an informed choice when deciding whether or not to work with a particular practitioner. Making these issues clear demonstrates respect and a wish to work in a mutually agreed way. Providing a contract empowers the client in ways that reinforce the ethical principles of trustworthiness and autonomy, and our commitment to build appropriate relationships with clients.

The *Ethical Framework for the Counselling Professions* states that:

'We will give careful consideration to how we reach agreement with clients and contract with them about the terms on which our services will be provided'

(Good Practice, point 32)

Andy: And now, what needs to go into the contract?

Morgan: The contract in counselling usually refers to the initial agreement between the client and counsellor, which sets out some of the rights and responsibilities of both parties. It has two distinct parts: the business part, which sets out the ground rules or framework for the work, and the therapeutic side, which sets out what the *Ethical Framework for the Counselling Professions* describes as the 'client's expressed needs and choices' (Good Practice, point 31a). Both parts need to be given careful thought as they form the basis of ethical and legal commitments between practitioner and client.

The *Ethical Framework* also tells us that we need to ensure that we are:

'Building an appropriate relationship' and that 'We will give careful consideration to how we reach agreement with clients and contract with them about the terms on which our services will be provided. Attention will be given to:

- a. *reaching an agreement or contract that respects each client's expressed needs and choices so far as possible*
- b. *communicating terms and conditions of the agreement or contract in ways easily understood by the client and appropriate to their context*
- c. *stating clearly how a client's confidentiality and privacy will be protected and any circumstances in which confidential or private information will be communicated to others [with or without the client's consent]*
- d. *providing the client with a record or easy access to a record of what has been agreed*
- e. *keeping a record of what has been agreed and of any changes or clarifications when they occur' (Good Practice, point 31a-e).*

By signing the contract, the counsellor agrees that they are competent to meet the client's goals (more about this later) and the client agrees to the conditions laid down. In essence, the contract sets out the rights and responsibilities of both parties.

Andy: I think I've understood that: so there are two distinct parts of the contract that I will need to consider. Let's talk about the business side first. What needs to go into that part?

Morgan: In the business side of the contract, you should put:

- a. The limits of confidentiality. This is particularly important. Confidentiality is rarely, if ever, absolute, and this needs to be made clear to the client very early on. There are usually three reasons to override confidentiality: first, to prevent harm to self or others; second, the need to discuss client work with your supervisor; and third, if you're working in a team, confidentiality may be to the team rather than to the individual practitioner. It is also helpful to remind clients that nothing sent electronically (mobile, email, or other devices) can be guaranteed to be entirely secure. Remember though, that confidentiality is a one-way street. The client can talk to anyone they want to about their own therapy.

They can blog or discuss it on social media sites or search the internet for details of the practitioner, but the practitioner cannot usually do these things without the client's clear permission. This relates to the *Ethical Framework*, Principles: 'Being trustworthy' and 'Autonomy'. It is therefore worth considering a caveat in your contract to say that you will not accept or give 'friends' invitations for social media sites. (See the *Ethical Framework*, Good Practice, point 33c; Good Practice in Action 040 Commonly Asked Questions: *Social media*, and Good Practice in Action 047 Fact Sheet: *Ethical Framework for the Counselling Professions Supplementary Guidance: Working Online* for more information. You can find these at: www.bacp.co.uk/gpia.)

- b. The amount of time allowed for sessions and whether this is fixed or variable.
- c. Whether sessions are open ended or have a minimum or maximum number. When you worked in an agency, they had a fixed number of sessions, and that was stated early on. In private practice you will have to decide how you want to work, but you need to make that clear to your clients from the beginning.
- d. The level of fees where appropriate. Think about what you wish to charge per hour and whether that will be the same fee for couples, or for students, for example. Again, what you charge is your decision, but be transparent.
- e. What, if any, contact is allowed between sessions? Normally this would be restricted to short messages regarding changing the times of sessions but may need to include how contact can be made and a limit on the amount of time allowed for contact between sessions before a charge may be made. This is especially important as we have all become used to an instant response to our queries, and clients may expect that from you if you do not clearly state your availability. The same boundaries apply to online working or telephone as to face to face.
- f. Sanctions, if any, that will be applied for non-attendance or cancellations.
- g. The name and contact details of the practitioner's professional body.

Some organisations, for example, may run a system whereby a client who does not attend for two consecutive sessions (with or without a reason) is automatically taken off their list and would then return to the waiting list. Practitioners in private practice may charge for missed sessions, or for sessions that are cancelled without a stated period of notice. Good practice is to have a written rule that all clients are aware of and that works for the practitioner (e.g. if missed sessions are not to be charged for, you, the practitioner, need to be happy with this, otherwise dissatisfaction is likely to seep into client work. This is in line with the ethical principle of 'Justice' (making sure that all clients are treated in the same manner) and self-respect (practitioner self-care). For more information see the *Ethical Framework*, Commitment 5 and Table 2 below.

Generally, it is a good idea to ask for some personal information such as any medication the client uses, and their GP surgery details. When the practitioner asks for personal information, the client has a right to know why this information is needed, and under what circumstances it may be used and how it will be securely stored. The Data Protection Act 2018 sets out the legal requirements for anyone who processes data about people in the UK. We also need to abide by GDPR (General Data Protection Regulation), which is the European regulation setting out the main principles of data protection and the responsibilities that organisations and practitioners have when handling personal data. It is important therefore that you are clear about why you are asking for clients' information and how you will protect it. You can find more information about GDPR by reading BACP's Good Practice in Action 105 Legal Resource: GDPR legal principles and practice notes (www.bacp.co.uk/media/7437/bacp-gdpr-principles-practice-notes-legal-resource-gpia105-jan20.pdf), the Data Protection Act at: www.ico.org.uk/for-organisations/guide-to-data-protection/, and whether you should register with the Information Commissioner's Office at: www.ico.org.uk/for-organisations/register/self-assessment. Working as a sole trader, you can also access information at: www.ico.org.uk/for-organisations/business/assessment-for-small-business-owners-and-sole-traders. The main implications (other than registering with the ICO) for the counselling professions include:

- the rights of data subjects to access any electronic records held about them – see www.ico.org.uk/for-the-public/personal-information
- the necessity of obtaining any client's explicit consent to keeping counselling or closely related records as these will typically contain 'sensitive personal data'

- any records should be adequate, relevant and not excessive; accurate, and where necessary kept up to date; and, not kept for any longer than necessary (i.e. consistent with the client's consent and the purpose for which clients agreed to the records being kept). Andy, it may also be appropriate to review your Privacy Notice as there are some situations in which you might share a client's data without their consent, for example when risk of harm is involved. As far as data protection is involved, consent is a complex area and I would suggest you read Good Practice in Action 105 Legal Resource: *GDPR legal principles and practice notes* (www.bacp.co.uk/media/7437/bacp-gdpr-principles-practice-notes-legal-resource-gpia105-jan20.pdf).
- the privacy and confidentiality of any records should be protected by adequate physical and electronic security measures – see www.ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/security.

For more information about record keeping, see BACP's Good Practice in Action 066 Commonly Asked Questions: *What do we mean by records and record keeping within the counselling professions?* and Good Practice in Action 067 Commonly Asked Questions: *Practical aspects of record keeping within the counselling professions*, which can be found at: www.bacp.co.uk/gpia.

Andy: That's quite a list. I'm not sure how I will get through it all in a way that the client will understand. Can I just talk this through, or should I be giving a written contract as well?

Morgan: It will probably take less time than you think, but it is best practice to give the client a written contract that they sign and can refer to later. One reason for this is that many clients are understandably nervous in the first session. However clearly the practitioner explains their working frame, it is entirely possible that the client will forget crucial details.

Giving written details allows clients to have a document to refer to later if they need to. As an example, it is very common for clients to forget if they have been told that they will be charged for a missed session, so being able to refer them to a signed document can make the difference. It is important that the contract is written in such a way that the above points 'are easily understandable by the client and appropriate to their context providing the client with a record or easy access to a record of what has been agreed' (*Ethical Framework*, Good Practice, point 31b and 31d).

Therefore, it is best practice to give written details outlining your terms and conditions to all clients as early as possible, either in the first session or at any pre-therapy meeting.

Information you provide. This is particularly important when working online, when you will need to have a simple method of giving clients access to an electronic copy of your contract. The *Ethical Framework*, Good Practice, point 26 states that we will: 'work with clients on the basis of their informed consent and agreement'. While in law (see Mitchels and Bond 2010, chapter 4) a verbal contract carries the same weight as a written contract, good practice is to make sure that all parties have a written agreement laying out rights and responsibilities. This gives you both a document to return to if necessary. This is in line with the ethical principle of 'Autonomy' (see Table 1 below). In terms of data protection, it is important to know that a client's consent to process personal data must be obtained and documented separately from their consent to other terms and conditions of the therapy such as your counselling fee.

Andy: Are you saying that I have to do this with all clients?

Morgan: Yes. The *Ethical Framework* says practitioners need to consider how to come to an agreement with their clients about how they will work together. There are other more or less formal methods of contracting but I am recommending an approach that is widely used across the counselling professions. If you change what was agreed and contracted at the start of the work with the client, you can either issue a new contract, add a dated and signed statement of the change to the original contract or record specific changes in your notes – especially if these are minor changes.

Remember any change to a contract needs to be agreed by both the practitioner and the client. Good practice in contracting is relevant to the principle of 'Justice', which asks us to pay attention to treating all clients fairly (see Table 1 below).

Andy: But if I do all this at the beginning, won't it stop the client and me from 'going with the flow'?

Morgan: This is a valid point and some practitioners would rather allow clients to begin discussing their issues from the moment they walk through the door. One way of dealing with this issue is to send a copy of the contract with any pre-therapy information and ask clients to read it before the first session.

Andy: As you know, I am intending to work online as well as face to face. Is there anything I need to do differently there?

Morgan: The online contract remains much the same as face to face with some small changes. For example, you will need to think about a payment system; what you will do if the technology crashes; and also, and perhaps most important, be aware of local laws governing the therapy (for example, if the client is a resident of the US it may be illegal to work with them without being licensed by the particular state). See Good Practice in Action 047 Fact Sheet: *Working online in the counselling professions* at: www.bacp.co.uk/gpia for more details.

There are some other points regarding online working, such as explaining to potential clients that it is important that they (and you) are speaking in a private space, where neither of you will be disturbed. Also, you need to be clear about who will make contact first – I tend to wait for the client, as that gives them the choice and seems as if they are knocking on the door. Do you have a fail-safe in operation? Consider what you will do if the technology fails, as it inevitably will at some point. It is important to remember that whilst you and your clients might use email for admin tasks such as re-arranging sessions, holding counselling sessions via email is not appropriate.

Of course, each client is an individual, with differing needs. However, the basic rules of cost, timing, and confidentiality must apply to all of your clients, whether you see them face to face, or via electronic means, which could include audio, video, or messaging. Whatever electronic method you choose must be secure and you can find out more by reading Good Practice in Action 047 Fact Sheet: *Working online in the counselling professions*.

Andy: I have thought about that. My plan is to have my mobile phone with me, on silent of course. Then if the technology fails, I will ring them within five minutes and continue on the phone if necessary.

Morgan: That sounds a workable plan. Make sure you put that in your contract, and also explain verbally in the first session

Andy: I have been wondering about payment: I feel very uncomfortable asking for money, especially with people who tell me about their financial difficulties or have missed a session because they don't have the money.

Morgan: In the UK, where we are used to help being free at the point of service, asking for money can feel very uncomfortable. However, you do need to make a living, and you do need to make a rule that is applicable to all your clients (in line with the ethical principle of 'Justice') but also fair to you (ethical principle of 'Self-respect'). See the *Ethical Framework* (Ethics, point 5) where all the ethical principles are set out.

Andy: You've given me a lot to think about, particularly with regard to charging for caring. But in the meantime, what should go into the therapeutic contract?

Morgan: This will depend on the practitioner's preference. Different modalities will have different ways of setting out contracts. For example, if you work in a time-limited way, you will probably want to make a very specific contract, and one with behavioural goals that are achievable within the time you have together. For longer term work, it could be a contract that includes an end, or review dates, but not specific behavioural goals. However you choose to manage it, remember it is vital. It is the part of the work when you and your client discuss an agreed way of working, and it is the start of your therapeutic relationship.

Andy: That sounds quite interesting. Can you give me an example of a specific contract for working in a time-limited way?

Morgan: Specific time-limited contracts are usually about concrete behavioural changes. For instance, if your client is dealing with bereavement, a contract that by the end of six weeks s/he will feel better is not realistic. Realistic changes (which are the client's responsibility to suggest) may include: return to work; talk to three friends; cook two meals in week and eat them; make/keep contact with a local bereavement group ... the list is endless. Each of these examples could be presented as a goal or as an aim of the work together rather than a definite outcome. Avoid promising outcomes that you are uncertain about achieving or that are not within your power or responsibility to achieve. However goals are achieved, the important point is that you are making a contract in which any agreed goals that are significant to either the client or the practitioner are clearly stated and that these are consistent with the level of practitioner competence. See the *Ethical Framework*, which says that we need to give attention to:

- a. *reaching an agreement or contract that takes account of each client's expressed needs and choices so far as possible.*
- b. *communicating terms and conditions of the agreement or contract in ways easily understood by the client and appropriate to their context*
- c. *stating clearly how a client's confidentiality and privacy will be protected and any circumstances in which confidential or private information will be communicated to others*
- d. *providing the client with a record or easy access to a record of what has been agreed*
- e. *keeping a record of what has been agreed and of any changes or clarifications when they occur.* (Good Practice, point 31a-e).

For more information regarding the contract you might like to read BACP's Good Practice in Action 055 Fact Sheet: *Making the contract in the counselling professions*, at: www.bacp.co.uk/ethics/gpia.

Andy: But I don't want my clients to feel they have to set goals if they don't want to. Why can't I just go with whatever the client brings up?

Morgan: In my experience it is incredibly helpful for both the client and practitioner to have some idea of where they are headed. It gives a focus for reviewing your work, and in short-term work keeps you on track. It is essential that you have some idea of your clients' agenda, as you need to be clear that you are working within your own level of competence (otherwise you may well be in breach of the ethical principle of 'Beneficence', or actively doing good).

Conclusion

Every practitioner working within private practice will have developed their own individual way of working; each one therefore will want to create their own individual contract and set different boundaries in order to maintain the therapeutic framework. Nevertheless, practitioners with clearly expressed boundaries are less open to manipulation, either conscious or unconscious, and more able to enter into a working alliance that is transparent and free from psychological game playing.

However, thorough your contract-making, there will inevitably come a time when you are presented with a new dilemma.

The six ethical principles, together with the Personal Moral Qualities (PMQs), give a framework that may be helpful when thinking about problems that have arisen in the counselling relationship. Tables 1 and 2 below give a quick guide as to how both the ethical principles and the PMQs fit into contract-making and how they might be used to assess dilemmas.

BACP will be producing further Good Practice in Action resources in respect of making the contract, which when available will be downloadable at: www.bacp.co.uk/gpia.

Table 1

Ethical Framework for the Counselling Professions – Principles

Principle	Ethical issue in making the contract
<p>Trustworthiness 'honouring the trust placed in the practitioner'</p>	<p>Have I been clear about my limitations? Example: if you agree to out-of-session contact be clear about the limits you are happy with.</p>
<p>Autonomy 'Respect for the client's right to be self-governing'</p>	<p>Have I given clients all the information they may need to decide whether or not to work with me? Example: are my areas of competence and/or fees clearly set out?</p>
<p>Beneficence 'a commitment to promoting the client's wellbeing'</p>	<p>Am I sure that I can actively help this person or do I need more information first? Example: if I work in a short-term modality can I be sure that this person will benefit from short-term work?</p>
<p>Non-maleficence 'a commitment to avoiding harm to the client'</p>	<p>Am I clear about what emotional abuse might entail? Example: finding myself involved in long written or verbal conversations that have not been contracted for.</p>
<p>Justice 'the fair and impartial treatment of all clients and the provision of adequate services'</p>	<p>Am I being fair to all clients? Example: do I apply any did-not-attend rules to all clients whatever my personal sympathies?</p>
<p>Self-respect 'fostering the practitioner's self-knowledge, integrity and care for self.'</p>	<p>Do I take adequate care of myself? Example: am I charging a fee that is fair to me as well as my clients?</p>

Table 2

Ethical Framework for the Counselling Professions *Principles – Personal Moral Qualities (PMQs)*

PMQ	Ethical issue in making the contract
Candour: 'openness with clients about anything that places them at risk of harm or causes them actual harm'	Have I been clear about limits of confidentiality and when and what steps I would take if necessary?
Care: 'benevolent, responsible and competent attentiveness to someone's needs, wellbeing and personal agency'	What strategies do I have in place to make sure that the client completely understands the contract?
Courage: 'the courage to act in spite of known fears, risks and uncertainty'	Will I be able to ask for payment for missed sessions even when I am anxious that it might alienate the client?
Diligence: 'the conscious deployment of skills and knowledge needed to achieve a beneficial outcome'	Am I clear about the limits of my competence?
Empathy: 'the ability to communicate understanding of another person's experience from that person's perspective'	Is my contract written in language that is easily understood?
Fairness: 'impartial and principled in decisions and actions concerning others in ways that promote equality of opportunity and maximise the capability of the persons concerned'	Am I clear about when payment is expected/any charges for missed sessions and do I apply these equally to all clients?
Humility: 'the ability to assess accurately and acknowledge one's own strengths and weaknesses'	Have I asked a trusted professional to read my contract and feed back any perceived issues?
Identity: 'sense of self in relationship to others that forms the basis of responsibility, resilience and motivation'	Does my contract give a clear sense of who I am and what the boundaries of this relationship will be?
Integrity: 'commitment to being moral in dealings with others, including personal straightforwardness, honesty and coherence'	Am I straight forward and transparent in what I have said?

Table 2 (continued) *Ethical Framework for the Counselling Professions Principles – Personal Moral Qualities (PMQs)*

PMQ	Ethical issue in making the contract
Resilience: 'the capacity to work with the client's concerns without being personally diminished'	What have I said about out-of-session contact? Have I been clear about my limits?
Respect: 'showing appropriate esteem for people and their understanding of themselves'	Is my contract written in clear and respectful language?
Sincerity: 'a personal commitment to consistency between what is professed and what is done'	Do I believe in what I have said?
Wisdom: 'possession of sound judgement that informs practice'	Has my client verbally and in writing agreed to these terms?

About the author

Heather Dale is a Senior Accredited and Registered practitioner and a Fellow of BACP. She has worked in private practice and in the educational sector in Yorkshire for 30 years, most recently as a Senior Lecturer at Huddersfield University. She chairs BACP Professional Conduct Panels and is a past Chair of the AGM business sub-committee. She is the current Chair of Yorkshire Supervisor's Forum, a not-for-profit organisation.

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